

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SECOND DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 9745 of 2004

Between:

Abdul & Mazeed Khan, S/o Hussain Khan (Late),
Falaknuma Depot, Staff No. 59198, H.No. 4-14-25, Hassannagar,
Hyderabad.

..... PETITIONER

AND

The Depot Manager of APSRTC, Falaknuma Depot, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or Direction particularly one in the nature of Writ of Mandamus declaring the action of the respondent in removing the petitioner from service Vide Order No. E2/1(11)-2002-F.M. Dated 8-4-2004 after a lapse of 17 (seventeen) months on the basis of preliminary enquiry and not accepting the sick certificate issued by the Osmania General Hospital Doctor for the period from 26-10-2002 to 30-11-2002 treating the period as unauthorized absence, violating the APSRTC (Leave) Regulations 1963 Rule 11 (3) Leave on medical grounds, is as illegal, unjust contrary to law and violation of Principles of natural justice by granting all consequential benefits and set-aside the removal order No. E2/1(11)2002-F.M. dated 8-4-2004

For the Petitioner: MR.MOHD.GHOUSUDDIN, Advocate

For the Respondent : MR.K.HARINATH, S.C. for APSRTC

The Court, at the stage of admission, made the Following :

HONOURABLE SRI JUSTICE K.C.BHANU

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W.P.No.9745 of 2004

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ORAL ORDER:

For the unauthorized absence of the writ petitioner from his duty from 26.10.2002 to 30.11.2002 a departmental enquiry was conducted against him after giving him a reasonable opportunity for his explanation. After observing the rules, the Enquiry Officer submitted a report to the disciplinary authority stating that the charge leveled against the writ petitioner is held proved beyond reasonable doubt. Accepting the report of the Enquiry Officer, the disciplinary authority passed the impugned order, dated 8.4.2004 removing the petitioner from service due to his unauthorized absence from duty. Questioning the same, this Writ Petition is filed.

The learned counsel for the petitioner vehemently contended that as the petitioner was sick, he could not report for duty and the same was accepted by the authorities concerned and thereafter the writ petitioner worked for about 17 months. Hence, he prays to set aside the impugned orders, dated 8.4.2004.

The learned standing counsel for the respondent

contended that the petitioner has an alternative remedy of filing a statutory appeal as per the regulations against the impugned order and that it is not a case of not giving any reasonable opportunity to the writ petitioner or violation of principles of natural justice. The petitioner did not attend to his duties from 26.10.2002 to 30.11.2002 without there being any prior intimation to the higher authorities or prior sanction of leave from the higher authorities. After 30.11.2002, the petitioner produced medical certificate from Osmania General Hospital stating that he had taken treatment from 26.10.2002 to 30.11.2002. Not being satisfied with the explanation given by the petitioner, a regular departmental enquiry was conducted. In the enquiry, a charge leveled against the petitioner has been proved and the report of enquiry Officer has been accepted by the disciplinary authority, who passed the impugned proceedings.

Heard both the counsel. Perused the material on record.

It is not a case of violation of principles of natural justice because an opportunity was given to the delinquent and in fact, he has participated in the enquiry proceedings conducted by the Enquiry Officer. Now recourse to the alternative remedy is not a bar for entertaining the writ petition but in such a case, the petitioner must show that the enquiry was not conducted as per the regulations or that the evidence is not at all taken into consideration or that the principles of natural justice have been violated. It is not a case of violation of

principles of natural justice nor conducting the enquiry without adhering to the regulations governing the service conditions of the writ petitioner. So also, it is not a case whether the findings recorded by the disciplinary authority are based upon without any evidence.

In the absence of these three aspects, the writ petition is not maintainable, however, the writ petitioner is entitled to file an appeal before the Appellate authority and the appellate authority shall have to consider the same in accordance with law and dispose of it within a period of one month from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of at the stage of admission. In the circumstances of the case, there shall be no order as to costs.

(K.C.BHANU,J.)

2nd July, 2004
bcj/vs

To

1. The Depot Manager, APSRTC,
Falaknuma Depot, Hyderabad.
2. Two C.D. copies